

Federal Communications Commission

DA 99-240

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 98-174  
Table of Allotments, ) RM-9356  
FM Broadcast Stations. )  
(Spencer and Webster, Massachusetts )

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**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: January 20, 1999

Released: January 29, 1999

By the Chief, Allocations Branch:

1. In response to a petition filed by Chowder Broadcast Group LLC ("Chowder"), the Commission has before it for consideration the Notice of Proposed Rule Making, 13 FCC Rcd 18797 (1998), requesting the reallocation of Channel 255A from Webster, Massachusetts, to Spencer, Massachusetts, and modification of the license for Station WXXW to specify Spencer as the community of license. Chowder filed supporting comments in which it reaffirmed its interest in Channel 255A at Spencer. No other comments were received in response to the Notice in this proceeding.

2. The proposed reallocation of Channel 255A from Webster to Spencer, Massachusetts, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). As stated in the Notice, Spencer is a Census Designated Community with a population of 6,306 people and has its own post office and zip code.<sup>1</sup> Chowder was requested to furnish additional information to demonstrate that Spencer has the social, economic and cultural indicia to qualify it as a community for allotment purposes.<sup>2</sup> We believe that Chowder has provided us with sufficient

<sup>1</sup> The population figures is from the 1990 U.S. Census.

<sup>2</sup> Chowder states that Spencer has existed as an incorporated town in the Commonwealth of Massachusetts since 1753, is governed by an elected five-member Board of Selectmen which administers a budget that provides the community with its own police and fire departments, public works department and a public library. Further, the town budget also supports the Spencer-East Brookfield School District which operates three primary schools, one

indicia to conclude that Spencer is a community for allotment purposes. It is an identifiable population grouping with businesses and community organizations that identify themselves with the residents of Spencer. See Garrison, Kentucky, 6 FCC Rcd 1428 (1991), Harrietta, Michigan, 12 FCC Rcd 6058 (1997) and Keansville, Florida, 10 FCC Rcd 9831 (1995).

3. Chowder asserts that the reallocation of Channel 255A from Webster to Spencer, Massachusetts, would result in a preferential arrangement of allotments under the Commission's FM allotment priorities, since it would provide a first local aural transmission service to Spencer without removing the sole local service from Webster. While Spencer has no local aural transmission service, Station WGPF(AM) is licensed to Webster. According to Chowder, the reallocation will eliminate short spacings to two stations which exist from the current licensed location as a Webster station. Chowder states that Station WXXW, Webster, is presently short spaced to Station WPLR, New Haven, Connecticut, Channel 256B, and to Station WPLM, Plymouth, Massachusetts, also operating on Channel 256B. Chowder contends that any site relocation of Station WXXW which would eliminate both short spacings, would result in the transmitter site being located too far from Webster to provide the required city grade coverage. Chowder also states that the reallocation would allow Station WXXW to operate with maximum Class A facilities, resulting in a more efficient utilization of the spectrum.

4. We believe the public interest would be served by reallocating Channel 255A from Webster, Massachusetts, to Spencer, Massachusetts, since it would provide the community with its first local aural transmission service. The reallocation would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures, triggering priority (3) while retention of the channel in Webster triggers priority (4).<sup>3</sup> The community of Webster will continue to be served by Station WGPF(AM) and the 60 dBu contour from Station WXXW at Spencer will cover the community of Webster. Since Chowder intends to relocate its transmitter site, there will be gain and loss areas. A staff engineering analysis indicates that there is a loss of service to 71,823 people, while the reallocation to Spencer will result in an increase in service to 206,423 people. Our analysis also shows that both the gain and loss areas are well served, receiving five or more fulltime aural services. As the 70dBu contour does not encompass more than 50% of an urbanized area, a Tuck analysis

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junior high school and one high school in Spencer. Chowder states that there are a number of churches located in Spencer and that the community has several recreational facilities, such as the Spencer State Forest and Spencer Fair Grounds. Finally, Chowder points out that the community has a number of grocery stores, drug stores and gas stations that serve the residents and that many retail establishments identify themselves specifically with Spencer, such as Spencer Products, Spencer Motor Sales, Spencer Savings Bank and Spencer Shopper's Village which is an open-air shopping mall.

<sup>3</sup> The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

is not required in this proceeding.<sup>4</sup>

5. An engineering analysis has determined that Channel 255A can be allotted to Spencer, Massachusetts, in compliance with the Commission's minimum distance separation requirements at Chowder's specified site.<sup>5</sup> Since Spencer is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. In accordance with the Commission's Rules, we will also modify Station WXXW's license to specify operation on Channel 255A at Spencer, Massachusetts, as its new community of license.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 15, 1999**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Spencer, Massachusetts	255A
Webster, Massachusetts	-----

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license for Station WXXW, Webster, Massachusetts, IS MODIFIED to specify operation at Spencer, Massachusetts, in lieu of Webster, Massachusetts, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid

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<sup>4</sup> See Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988), Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 1052 (1995).

<sup>5</sup> The coordinates for Channel 255A at Spencer are 42-11-00 and 72-02-30.

the necessity of filing an environmental assessment  
pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Chowder Broadcast Group LLC, licensee of Station WXXW, is required to submit a rule making fee in addition to the fee required for the application to effect the change of community of license from Webster to Spencer, Massachusetts..

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 255A at Spencer, Massachusetts, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau